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Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JAMES P. BARRETT, P.T.
324 South Lanford Road
Spartanburg, South Carolina 29306

Physical Therapist License No. PT 158

Respondent.

Case No. 1D 2004-64030

**FIRST AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.
2. On or about September 19, 1969, the Physical Therapy Board of California issued Physical Therapist License Number PT 158 to James P. Barrett, P.T. (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2007, unless renewed.

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1 (i) Conviction of a violation of any of the provisions of this
2 chapter or of the State Medical Practice Act, or violating, or attempting to
3 violate, directly or indirectly, or assisting in or abetting the violating of, or
4 conspiring to violate any provision or term of this chapter or of the State
5 Medical Practice Act.

6 (j) The aiding or abetting of any person to violate this chapter
7 or any regulations duly adopted under this chapter.

8 (k) The aiding or abetting of any person to engage in the
9 unlawful practice of physical therapy.

10 (l) The commission of any fraudulent, dishonest, or corrupt act
11 which is substantially related to the qualifications, functions, or duties of a
12 physical therapist or physical therapy assistant.

13 (m) Except for good cause, the knowing failure to protect
14 patients by failing to follow infection control guidelines of the board,
15 thereby risking transmission of blood-borne infectious diseases from
16 licensee to patient, from patient to patient, and from patient to licensee. In
17 administering this subdivision, the board shall consider referencing the
18 standards, regulations, and guidelines of the State Department of Health
19 Services developed pursuant to Section 1250.11 of the Health and Safety
20 Code and the standards, regulations, and guidelines pursuant to the
21 California Occupational Safety and Health Act of 1973 (Part 1
22 (commencing with Section 6300) of Division 5 of the Labor Code) for
23 preventing the transmission of HIV, Hepatitis B, and other blood-borne
24 pathogens in health care settings. As necessary, the board shall consult
25 with the Medical Board of California, the California Board of Podiatric
26 Medicine, the Board of Dental Examiners of California, the Board of
27 Registered Nursing, and the Board of Vocational Nursing and Psychiatric

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1 Technicians, to encourage appropriate consistency in the implementation
2 of this subdivision.

3 The board shall seek to ensure that licensees are informed
4 of the responsibility of licensees and others to follow infection control
5 guidelines, and of the most recent scientifically recognized safeguards for
6 minimizing the risk of transmission of blood-borne infectious diseases.

7 (n) The commission of verbal abuse or sexual harassment.

8 6. Section 2661 of the Code states:

9 A plea or verdict of guilty or a conviction following a plea
10 of nolo contendere made to a charge of a felony or of any offense
11 which substantially relates to the qualifications, functions, or duties
12 of a physical therapist is deemed to be a conviction within the
13 meaning of this article. The board may order the license suspended
14 or revoked, or may decline to issue a license, when the time for
15 appeal has elapsed, or the judgement of conviction has been
16 affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent
18 order under Section 1203.4 of the Penal Code allowing that person
19 to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the
21 accusation, information, or indictment.

22 7. Section 2661.5 of the Code states:

23 (a) In any order issued in resolution of a disciplinary
24 proceeding before the board, the board may request the administrative law
25 judge to direct any licensee found guilty of unprofessional conduct to pay
26 to the board a sum not to exceed the actual and reasonable costs of the
27 investigation and prosecution of the case.

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1 (b) The costs to be assessed shall be fixed by the administrative
2 law judge and shall not in any event be increased by the board. When the
3 board does not adopt a proposed decision and remands the case to an
4 administrative law judge, the administrative law judge shall not increase
5 the amount of the assessed costs specified in the proposed decision.

6 (c) When the payment directed in an order for payment of costs
7 is not made by the licensee, the board may enforce the order of payment by
8 bringing an action in any appropriate court. This right of enforcement shall
9 be in addition to any other rights the board may have as to any licensee
10 directed to pay costs.

11 (d) In any judicial action for the recovery of costs, proof of the
12 board's decision shall be conclusive proof of the validity of the order of
13 payment and the terms for payment.

14 (e)(1) Except as provided in paragraph (2), the board shall not
15 renew or reinstate the license or approval of any person who has failed to
16 pay all of the costs ordered under this section.

17 (2) Notwithstanding paragraph (1), the board may, in its
18 discretion, conditionally renew or reinstate for a maximum of one year the
19 license or approval of any person who demonstrates financial hardship and
20 who enters into a formal agreement with the board to reimburse the board
21 within that one year period for those unpaid costs.

22 (f) All costs recovered under this section shall be deposited in
23 the Physical Therapy Fund as a reimbursement in either the fiscal year in
24 which the costs are actually recovered or the previous fiscal year, as the
25 board may direct.

26 8. Section 141 of the Code states:

27 (a) For any licensee holding a license issued by a board under
28 the jurisdiction of the department, a disciplinary action taken by another

1 state, by any agency of the federal government, or by another country for
2 any act substantially related to the practice regulated by the California
3 license, may be a ground for disciplinary action by the respective state
4 licensing board. A certified copy of the record of the disciplinary action
5 taken against the licensee by another state, an agency of the federal
6 government, or another country shall be conclusive evidence of the events
7 related therein.

8 (b) Nothing in this section shall preclude a board from
9 applying a specific statutory provision in the licensing act administered by
10 that board that provides for discipline based upon a disciplinary action
11 taken against the licensee by another state, an agency of the federal
12 government, or another country.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Out of State Discipline)

15 [Bus. & Prof. Code § 141(a)]

16 9. Respondent is subject to disciplinary action under Code section 141(a) in
17 that the South Carolina State Board of Physical Therapy Examiners issued Respondent a public
18 reprimand. The circumstances are as follows:

19 10. On or about November 1, 2001, the South Carolina State Board of
20 Physical Therapy Examiners issued a Consent Order which included a finding that Respondent
21 had admitted that he had failed to maintain patient records as alleged in a Formal Accusation.
22 The Consent Order also issued Respondent a Public Reprimand.

23 11. The South Carolina State Board's disciplinary action against Respondent's
24 physical therapy license constitutes a violation of Code section 141(a).

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Out of State Discipline)

27 [Bus. & Prof. Code § 141(a)]

28 12. Respondent is subject to disciplinary action under Code section 141(a) in
that the South Carolina State Board of Physical Therapy Examiners issued a Consent Order in

1 2004 suspending Respondent's license to practice physical therapy in South Carolina. The
2 circumstances are as follows:

3 13. On or about April 3, 2004, the South Carolina State Board of Physical
4 Therapy issued a Consent Order suspending Respondent's license to practice physical therapy.
5 However, the suspension was stayed and Respondent was placed on two (2) years probation with
6 terms and conditions, including supervision, random inspections, and a fine of \$1,000.00.
7 Respondent admitted that he billed for service improperly as alleged in the Fomal Accusation.

8 14. The South Carolina State Board's 2004 disciplinary action against
9 Respondent's physical therapy license constitutes a violation of Code section 141(a).

10 **THIRD CAUSE FOR DISCIPLINE**

11 (Conviction of a Crime)
[Bus. & Prof. Code § 2661]

12 15. Respondent is subject to disciplinary action under Code section 2661 in
13 that in the United States District Court, District of South Carolina, Respondent has been
14 convicted of a felony and a crime substantially related to the qualifications, functions, or duties
15 of a physical therapist. The circumstances are as follows:

16 16. On or about May 11, 2005, in the District Court of the United States for
17 the District of South Carolina, Spartanburg Division, in Criminal Case No. 7:05-34, Respondent
18 pled guilty to a violation of Title 18, United States Code, Section 1347 (Health Care Fraud),
19 which constitutes a violation of section 2661 of the Code.

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21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Physical Therapy Board of California issue a
24 decision:

25 1. Revoking or suspending Physical Therapist License Number PT 158,
26 issued to James P. Barrett, P.T.;

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2. Ordering James P. Barrett, P.T., to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: June 22, 2005.

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant